Synopsis on

"CRITICAL ANALYSIS OF FOOD SAFETY & STANDARDS ACT, 2006 WITH SPECIFIC REFERENCE TO RESTAURANTS IN INDIA"

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Synopsis on the topic entitled,

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1.1 Introduction

Right to health, despite not expressly incorporated in constitution, but impliedly includes under various provisions[1] and judiciary had further stretched these provisions interpreting the right to health as integral part of constitutional package.[2] Health is the primary parameter to enjoy the life, therefore ensuring public health[3] would certainly means to make life meaningful. Court has categorically clarified that right to Health is essential for human existence and is, therefore an integral part of the Right to Life.[4] Apart from the constitutional mandate, there is international consensus in favour of public health. Public health is indicator of health society which indicate economical, political and social sustainability. Good Health indicators are appraisal for describing the health of population and

1 See, for e.g. Art. 21, Art. 38, Art. 42, & Art. 47 has directly linkage with health. Art 47 which imposes duty on the State to raise the level of nutrition and the standard of living and to improve public health Further vide several decisions, court has made these provision meaningful for human health and existence. Further, Art. 51 A (g) imposes fundamental duty on every citizen to have compassion for living creatures. Further Article 243-G Eleventh Schedule under item 23 has provision for health.

2 For e.g. in Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802 court clarify that right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and Particularly clauses (e) and (f) of Article 39 and Article 41 and 42. In P Sivaswamy v. State of Andhra Pradesh, AIR 1988 SC 1863 the Supreme Court has held that Article 42 of the Constitution makes it the obligation of the State to make provisions for securing just and humane conditions of work. See also, Municipal Corporation v. Jan Mohammed AIR 1986 SC 1205; Burrabazar Fire Works Dealers Association and Others v. Commissioner of Police, Calcutta AIR 1998 Cal. 121; Paschim Banga Khet Mazoor Samity v. State of W.B. 1996 (4) SCC 37; State of Punjab v. Ram Lubhaya Bagga AIR 1998 SC 1703.

3 Public health refers to "the science and art of preventing disease, prolonging life and promoting health through organized efforts and informed choices of society, organizations, public and private, communities and individuals." Winslow, Charles-Edward Amory (1920). "The Untilled Field of Public Health". Modern Medicine. 2: 183–191. Quoted from, https://en.wikipedia.org/wiki/Public_health visited on 11.09.2016

4 See, Consumer Education and Resource Centre Vs Union of India AIR 1955 SC 636

are quantifiable characteristics of given community. The poor food safety measures and substandard food quality not only make 'right to health' meaningless, but also imposes heavy social and economic burden on communities and their health systems. At number of instances, the court had clarify the priority of public health on its top priority.[5]

Thus public health of community has direct linkage with food safety[6] and standards. Better food safety education, higher standards of hygiene, improved water supplies and sanitations, application of safe good processing technologies, access to diversity of foods in a balance diet is parameter of health population which ensure life expectancy and in true sense define 'welfare state'. The time has come to re-examine the constitutional package in the 70 years of independence that how far it transformed from paper-base assurances to the ground reality. Indian Constitution visualized to be the 'welfare state' and this claim needs to scrutinize on the issue of public health and its two vital components, food safety and standards. This research has been undertaken to explore the public health on these vital components.

Health is crucial factor in many terms like economic development and sustainability. Since, production & consumption of safe and standard food in a given community is synonyms of its public health and therefore, the public health of the community can be interpreted on the parameters

5 In Vincent Panikurlangara v. Union of India AIR 1987 SC 990 the court expressed, "maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends, the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore is of high priority perhaps the one at the top". This clearly manifest the approach of judiciary on the importance of health to the life.

6 Food safety is a scientific discipline describing handling, preparation, and storage of food in ways that prevent foodborne illness. This includes a number of routines that should be followed to avoid potentially severe health food hazards. See, http://foodsafety-hygiene.conferenceseries.com/events-list/food-safety-regulatory-affairs retrieved on 09.10.2016

in terms of dimension of existing food chain in the community. Access to sufficient and safe food is a basic human necessity and essential for creating a world without hunger and for achieving poverty reduction worldwide.[7] The researcher therefore, formulated the area of legal mechanism of food safety and standards in India.

Food safety and standards are an instrument for achieving public health, failure of which may leads to foodborne disease, health issues, low life expectancy and increased mortality rate. Its indirect impact may be seen on burden of health care practices on economy, low life standards and less output. Foodborne diseases not only adversely affect people's health and well-being, but also have negative economic consequences for individuals, families, communities, businesses and countries. These diseases impose a substantial burden on health-care systems, trade and tourism, markedly reduce economic productivity and threaten livelihood. Yet, the full spectrum of the burden of foodborne diseases has never been quantified on a global basis, since foodborne illnesses are often under-reported. Policy makers at the local, national and international levels need science-based, reliable estimates on the burden of foodborne disease to inform their decisions and mobilise resources.[8] Yet another report revealed that restaurants are important settings for foodborne disease transmission. The Environmental Health Specialists Network (EHS-Net) was established to identify underlying factors contributing to disease outbreaks and to translate those findings into improved prevention

7 Advancing Food Safety Initiatives Strategic Plan for Food Safety Including Foodborne Zoonoses 2013–2022, pg. 7. Available at http://www.searo.who.int/entity/foodsafety/global-strategies.pdf?ua=1 accessed on 19.09.2016

8 Advancing Food Safety Initiatives Strategic Plan for Food Safety Including Foodborne Zoonoses 2013–2022, pg. 7. Available at http://www.searo.who.int/entity/foodsafety/global-strategies.pdf?ua=1 accessed on 19.09.2016

efforts.[9] This area is thus important due to its multiple impact, and demand the serious and focus research from legal standpoint, because welfare of the society is the utmost goal of legal system.

To ensure food safety is a shared responsibility. It is important to work all along the food production chain – from farmers and manufacturers to vendors and consumers.[10] Food safety is everybody's concern, and it is difficult to find anyone who has not encountered an unpleasant moment of foodborne illness at least once in the past year.[11] Law has responsibility to promote social welfare. Therefore, factors affecting health, posing challenges to production and consumption of safe and standard food must have the prime concern for legal system.

The important components of ensuring the accessibility to safe and standard food in India are the restaurants which are out-home centers of production, manufacturing, distribution, delivery and disposal destination in food chain. Restaurants are informal source of food. Therefore, any research activity focusing for analyzing the food safety and standards would be incomplete without exploring the role of restaurants in the food chain. The recent studies in USA suggested that restaurants may be an important source of foodborne illness.[12] Asian region in general and India in particular exhibit the strong informal food production and marketing system and restaurants share the major part of it. Regulating these

9 Craig W. Hedberg, S. Jay Smith, Elizabeth Kirkiland, Vincent Radke, Tim F. Jones, Carol A. Selman and the EHS-HET working group Systematic Environmental Evaluations To Identify Food Safety Differences between Outbreak and Nonoutbreak Restaurants, Journal of Food Protection, Vol. 69, No. 11, 2006, Pages 2697–2702

10 See, http://www.who.int/campaigns/world-health-day/2015/event/en/ visited on 22.09.2016

11 Available at, http://www.searo.who.int/entity/world_health_day/2015/whd-what-you-should-know/en/ retrieved on 04.09.2016

12 Laura R. Green, Carol Selman, Elaine Scallan, Timothy F. Jones, Ruthanne Marcus and the EHS-NET population survey working Group Beliefs about Meals Eaten Outside the Home as Sources of Gastrointestinal Illness Journal of Food Protection, Vol. 68, No. 10, 2005, Pg. 2194

restaurants on safety and standard food parameters is truly a legal concern. Since its lacks strong regulation, it poses challenges for enforcement of food safety regulations. As a result, instances of food adulteration and contamination can occur.[13] Therefore, if food safety and standards is required to be achieved as prescribed by the Food Safety and Standards Act, 2006, ensuring the effective regulation of restaurants shall be the prime priority. On the other hand, the restaurants are also play useful role for the public as it ensure the availability of out-home food. In the society like India where the process of urbanization and industrialization is high, such restaurants are very convenient. Apart from it, tourism industry cannot flourish without chain of restaurants, traveling population is solely depends for food on restaurants. The flexibility of restaurants helps to provide readymade food to packed food and it also serve variety of food which helps the out-home population to enjoy food of their choice. The restaurants channelize food culture and make available the different ethnic food under one roof. It also helps to grow the economy. Thus the important role of the restaurants cannot be underestimated in society.

However, every industry which play key role and put impact on all walk of life is required to be regulated. No doubt that there are several reasons for boosting up the food industries. Traditionally, societal preferences call for hot and well-cooked food, and even milk is boiled (pasteurized). These habits are partially responsible for preventing foodborne infections. Street food is popular in urban settings in many countries. Hygienic conditions are improving, provided that potable water supply and clean facilities are ensured by municipal authorities. The

13 http://www.searo.who.int/entity/world_health_day/2015/whd-what-you-should-know/en/

introduction of bottled drinking water and its popularity in urban areas has contributed to prevent waterborne and diarrhoeal diseases in countries with inconsistent water treatment. Political awareness and consumer education on food safety will help strengthen enforcement of food standards, improve hygienic practices, and prevent foodborne illnesses.[14]

Unfortunately, in India, the concept of training to food-handlers, consumer awareness, public education and strategies of preventing foodborne diseases lacks their place in present FSS act. It is claimed that many foodborne diseases occur because of some basic error in preparing meals, whether in restaurants, canteens or homes. Nearly all could have been avoided if those who prepare meals were trained in elementary food safety. Therefore, governments should undertake intensive efforts to educate food-handlers. Consumers too should learn how to ensure that only safe good reaches their tables. Public education and community participation are recognized as important strategies to improve food safety and prevent foodborne diseases.[15] In absence of provisions to ensure these strategies the best piece of legislation would also fail on enforcement front. The same is the fate of FSS act which has been designed conceptual strong but strategically weak. Therefore, at number of fronts, its enforcements is apparently lack effective execution.

Incidentally it shall be borne in mind that the food trade has become prominent activities at national and international level. The transportation facility and smooth channalisation of world trade has

14 http://www.searo.who.int/entity/world_health_day/2015/whd-what-you-should-know/en/

15 Food Safety : An essential Public Health Issue for the New Millennium, WTO report No. who/sde/phe/fos/99.4 Food Safety Programme, Department of Protection of the Human Environment, Cluster of Sustainable Development and Healthy Environments, World Health Organisation, Geneva.

boosted this business. It is also playing the fertile role for food industry too. The globalization of the food trade offers many benefits to consumers, as it can bring to the market a wider variety of foods that are accessible, affordable and meet consumer demands. A diversity of foods in a balanced diet improves nutritional status and health. The global food trade provides opportunities for food-exporting countries to earn foreign exchange, indispensable for the economic development and for improving the standard of living of many people. [16]

One solution to address this problem is to have the national food safety programme. Fortunately, we have entered in new era of food legislation after passing of the FSS Act in 2006 which is clear departure from old legislation which only aimed at food adulteration. FSS act has established the high standard and safety measures. However, it is argued that this act shifted the government responsibility on others. Instead of proper enforcement of regulations, it shifted burden on others.

Thus, with respect to legal framework for food safety and standards as prescribed by the Food Safety and Standards Act, 2006, the evaluation of role of restaurants in ensuring the standards and safety is too important to discuss. As discussed earlier, due to the commercialization and globalization of food industry, the problem of food safety and standards become more crucial and several challenges has been emerged for this industry to be addressed. These challenges are concern for legal system at present. The past decade has seen new challenges to food safety. More people expect a wider variety of foods than in the past; they want foods that are not in season and often eat away from home. The integration and

16 Advancing Food Safety Initiatives Strategic Plan for Food Safety Including Foodborne Zoonoses 2013–2022, pg. 8. Available at http://www.searo.who.int/entity/foodsafety/global-strategies.pdf?ua=1 accessed on 19.09.2016

consolidation of agricultural and food industries, new dietary habits, the globalization of the food trade and human movements are modifying the patterns of food production, distribution and consumption. [17]

At the same time, these changes present new challenges to food safety and have widespread repercussions for health, for instance by creating an environment in which both known and new foodborne diseases may occur in greater magnitude. A single source of contamination may become widespread, with global consequences, while longer life expectancy and increasing numbers of immunocompromised people result in a larger vulnerable population. [18] It is incidental to quote here that the study in USA has revealed that two-thirds of foodborne illness outbreaks in the United States are associated with restaurants or delis.[19]

Other key challenges include increasing awareness of the health impact of antimicrobial resistance in foodborne pathogens; identifying and assessing the risks posed by newly identified pathogenic microorganisms and chemical substances in the food supply; evaluating the impact of new technologies in food production and processing, including genetic engineering and nanotechnology, on consumer safety. Also, changes in animal food production and animal husbandry have an impact on the emergence and spread of diseases of zoonotic origin. Food safety and food control systems need to adapt to today's food production and distribution practices, moving their focus gradually from the end-product testing to the

17 Advancing Food Safety Initiatives Strategic Plan for Food Safety Including Foodborne Zoonoses 2013–2022, pg. 8. Available at http://www.searo.who.int/entity/foodsafety/global-strategies.pdf?ua=1 accessed on 19.09.2016

18 Advancing Food Safety Initiatives Strategic Plan for Food Safety Including Foodborne Zoonoses 2013–2022, pg. 9. Available at http://www.searo.who.int/entity/foodsafety/global-strategies.pdf?ua=1 accessed on 19.09.2016

19 See, Laura G. Brown, Brenda Le, Melissa R. Wong, David Reimann, David Nicholas, Brenda Faw, Ernestine Davis, and Carol A. Selman1 Restaurant Manager and Worker Food Safety Certification and Knowledge Published in Foodborne Pathogens and Disease Volume 11, Number 11, 2014

process control throughout the food chain. Education and training of food safety workers need to take these challenges and developments into account.[20]

If this state of affair prevail, what are the remedial measures? What government can do? What responsibility does different stakeholder share? What mechanism is available, and if not adequately addressing the issue, what modification needed? These are the question which is required to be addressed and this research will attempt to analyse these issues.

The basic question is *what is the role that law can play in this regards?* What purposes law can serve? And in what manner? It is claimed that law serves many purposes and functions in society. Four principles purposes and functions of law are establishing standards, maintaining order, resolving disputes, and protecting liberties and rights.[21] Thus, any legal issues persists, it shall be examined on these four principles. In this research also, the legal issues in the area of food safety and standards with respect to restaurants in India is to be examined on these fundamental aspects.

Thus in the light of above discussion, it can be inferred that being right to health is one of the fundamental rights as an integral part of right to life and constitutional assurance, it have to be taken in its proper spirit. Furthermore, as the right to health cannot be materialized in its fullest extent without ensuring the proper food safety and standard, it is essential that the legal mechanism must be brush up for its proper implementation. Restaurant, being one of the instrumental component in the food chain and its legal regulation may help to insure the objectives of food safety and

20 Ibid.

21 See for detail, http://www.businesslawbasics.com/chapter-3-purposes-and-functions-law-1 accessed on 22.09.2016

standardization as prescribed by the Food Safety and Standards Act, 2006, it is essential to examine the legal framework for the regulating the restaurants with reference to food safety and standards. The researcher, therefore, undertaken this vital topic for her study. Again, being the researcher had an occasion to have close look at the role of the restaurants because her kith and kin are in restaurant business it would give her potential advantage to know the challenges, threats and opportunities of response to the legal mechanism for food safety and standards. Furthermore, as researcher is post-graduate in the field of law, it helps her to understand the importance of legal for regulating any field by law in general and food safety in particular.

Under above backdrop, the researcher has taken up the research topic entitled, **"Critical analysis of the Food Safety & Standards Act, 2006 with specific reference to restaurants in India**" which inter alia focuses upon the critical study of food safety & standards in India in reference to role of restaurants ensuring the parameters set by legal framework.

1.2 Significance of the topic

As stated above, the subject under research entitled, **"Critical analysis of the Food Safety & Standards Act, 2006 with specific reference to restaurants in India**" is very significant due to several reasons. Due to commercialization of food industry, opportunities in global trade market for food supply, the technological advances in production and consumption of food, it create potential opportunity for prosperity. However, at the same time, consumer awareness, awareness of the workforce involve in food chain, and professional attitude of manufacture, producer, dealers, supplier and even consumer with regards

to health issues, legal rights and even logistic benefits has proved to be boon in this industry. The sudden wave of ethnic food culture, transportation facilities and new experiments both food producer and consumer and enhanced their expectations. The Maggie controversy proved the level of awareness amongst the population regarding health problem. Every issue regarding contaminated food, adulterated article of unsafe food attract the media attraction. In the light of these growing concern of the society, this research would have the great significance because the research on food safety and standards are very rare in India, that too from legal point of view. This research would have self-explanatory significance for the field of law.

1.3 Purpose & Scope of the study

At its very advent, there had taken place two vital changes in 20 and 21st century that plant the Indian society and legal system a far reaching effect. First, the WTO has make trade convenient, the consumer awareness has great who upward curve, the tourist industries are flourishing and there is growing conscious about the right amongst the population regarding public health. This researcher therefore, would help not only to conceptualize the concept like food safety and standards in Indian context, but it also help to understand the legal response to this field. No bout that there is great shift in attitude and approach of law towards food industry after passing of the Food Safety and Standards Act, 2006, and there is clear departure from the age old concept of food adulteration as adopted in old legislative piece the Food Adulteration Act, 1954, however, after 2006 it is evident that the transformation is very slow, and law is lagging behind to address the issues emerging in food industry. The purpose and of this study to evaluate the magnitude of legal response to this area, and

examine how far the law has ability and potential to regulate the field of food industry upto the extent of serving safe and standard food to the population so as to achieve the public health which is the ultimate constitutional goal. Since there is apparent vacuums in this area and scorching need of legal literature, this research will attempt to address this vacuum of finding out the relevancy of these right in present socio-legal context.

In near future, the study of this kind would be prove helpful for academician, researcher, legal thinker and policy maker to address the problem prevailing in this area and its proper solution. Since the concept of food safety and standards are recent in origin, this first hand study will also helpful to understand the legal response and make possible and necessary changes in legal framework, if required. Thus, this study has definite purpose and potential scope in future from legal point of view.

1.4 Statement of research and limitations

Despite, every research is an attempt to achieve perfection, No research is claimed to be perfect!!. Every research undertaken have certain limitations. This research is also having research limitation which, keeping intellectual honesty at breast, researcher humbly wants to admit.

The first limitation of this research activities lies in the fact that the research has been undertaken from legal point of view. Therefore, it may not endorse the social, political or technical issues from other angle. The researcher is the student of law, and her approach to opt this research is from legal perspective. Thus this entire research dominated by the legal approach in the development of an idea, formulation of research objectives and problem, data collection, tabulation and even the conclusion and suggestion. Researcher has hardly any hesitation to admit that her

research is in the field of law and thus understanding and appreciation of facts may differ from different perspectives. This research outcome would be, thus best suited from legal standpoint.

Secondly, while undertaking this research, the Indian legal system is at the focal point. The material refered, topic formulation and issue framing has been considered keeping Indian Legal system at the center. As it is observed that every legal system across the globe has different framework, the study under one legal system may not suit to other legal system. Though researcher has humbly submission that this research will be a good reference material for other legal system of different nation, however, its main focus is from Indian point of view.

Thirdly, since the researcher has been experiencing the scorching need of good and relevant literature on this topic, which may affect the final outcome. It has been observed that very less has been researched upon on this topic from legal point of view. In addition, there is hardly any research undertaken in India in this area so far. The foreign literature, therefore, reflect the different approach which may not be suits to Indian perspectives. Again, despite the Food Safety and Standards Act, 2006 has been passed ten years back, the progress is very slow. There very less judicial cases which help to evaluate the future issues. There is no specialized tribunal to resolve the cases. Thus the availability of literature is still create problem for researcher dared to research in this novel area of vital importance.

Fourthly, despite the researcher will take care to achieve utmost objectivity, it is possible that the popular belief may prejudice the result. The researcher will take best pain to give justice to the subject under research but possibility of any mistake may crept in. The research at the

outset of this research endurance, admit that as every research has some limitation, this research also may have certain limitation.

Third, the study has undertaken that overlap with various philosophical movements such as human right protection, commercialization, globalization, multicultural influence in food industry approaches and in modern society such issues make the regulation much more difficult and highly complex in nature. The researcher has tried to attempt the objectivity, however creping in of the possibility of prejudices, pre-notions and conceptions cannot be denied.

1.5 Review of the existing literature

No research can be ventured in vacuum, without going through the literary exercises already conducted by scholars and researchers in concern area under research. It is more so in the case of a doctrinaire study of present nature.

Research, in modern days, is dialectic activities. Every subsequent research shall necessary takes into account what already has been researched upon!! Otherwise it would leads to repetitive research, wastage of time and resources. The review of literature provide an opportunity to the researcher to glance through what already has been researched upon in the area of proposed researched. Apart from helping out to avoid incidental plagiarism, reviewing the existing literature help to sharpen the research focus, evaluate existing work and help in formulating the issues and priorities.

Doing a careful and thorough literature review is essential when one proposes to write about research at any level. It is basic homework that is assumed to have been done vigilantly, and a given fact in all research

papers, reports, legislation, survey or dissertation.[22] By providing one, usually offered introductory understanding for formulating research topic, issues and hypothesis. In other terms, reviewing of literature also evident that researcher has not neglected the existing material on topic, and thus the proposed research will be in furtherance of already existing literature, and it would not be reparative.

The task of reviewing the literature helps not only to surveys what research has been done in the past on your topic, but it also appraises, encapsulates, compares and contrasts, and correlates various scholarly books, research articles, and other relevant sources that are directly related to propos research. [23] Review of literature is advantageous to understand important aspects of research area, identifying data sources, help to familiarize, spotting out the idea for consideration, set objectives, formulate hypothesis, avoid repetitions, mapping strategy and balancing the relationship between concepts and operations variables.

Keeping it at breast, the researcher has also undertaken the review of literation in this area before formulation of problems, objectives, and developing her hypothesis.

The first hand literature is provided by the existing piece of legislature, the Food Safety and Standards Act, 2006. This act has consolidated the laws relating to food and to establish the Food Safety and Standards.[24] This act has triggered the new era in food legislations. The

22 See, Yoon Sik Kim, The Importance of Literature Review in Research Writing, available at https://owlcation.com/misc/literature_review accessed on 19.09.2016

23 See, Yoon Sik Kim, The Importance of Literature Review in Research Writing, available at https://owlcation.com/misc/literature_review accessed on 19.09.2016

24 See, preamble of the Food Safety and Standards Act, 2006 which runs as follows, "An Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto."

discussion, food safety summits, commentaries, conference proceedings,[25] workshops,[26] and debates on while formulation if this act had helped the researcher to understand the approach, methodology and mechanism of it. The previous legislations,[27] cases had further helped to understand the key issues before the government to bring the new one. The rules passed under the FSS Act, 2006 also helps to understand the administrative and procedural mechanism for regulations.[28] The researcher has also referred the several landmark cases to understand the legal issues and judicial approach on this vital topic. A few recent cases are worth to mention are, Swami Achyutanand Tirth & Ors vs Union Of India & Ors29 which involve the menace of growing sales of adulterated and synthetic milk in different parts of the country. The court had taken a serious note in this case and expressed concerned for increasing consumer awareness about ill effects of milk adulteration as stipulated in S. 18(1)(f) the States/Food Authority/Commissioner of Food Safety shall inform the general public of the nature of risk to health and create awareness of Food Safety and Standards. Yet another case M/S Omkar Agency & Anr vs The State of

25 See, for e.g., Global Food Safety Conference, 2016 entitled, 'The Global Food Safety Vision : Making the Change', organized on 29th February to 3rd March 2016, Berlin organized by The Global Food Safety Initiative (GFSI). Available at, http://www.tcgffoodsafety.com/ retrieved on 11.10.2016

26 For e.g. there are various workshops have been organized as a part of developing develop deliberation and awareness about act such as, The "Workshop on "Scientific Cooperation Framework for Food Safety" was organized on 12th July, 2016 in Gulmohar Hall, India Habitat Centre, New Delhi by Food Safety and Standards Authority of India,

27 Prior to FSS Act, 2006 several acts were in existing regulating food industry such as the Prevention of Food Adulteration Act, 1954 (37 of 1954), The Fruit Products Order, 1955, The Meat Food Products Order, 1973, The Vegetable Oil Products (Control) Order, 1947, The Edible Oils Packaging (Regulation) Order, 1998, The Solvent Extracted Oil, De oiled Meal, and Edible Flour (Control) Order, 1967, The Milk and Milk Products Order, 1992, the Essential Commodities Act, 1955 (10 of 1955). See for details Schedule – II of the FSS Act, 2006

28 For e.g. Food Safety and Standards Rules, 2011 & 2015, 16. Direction No. F. NO. 11/09/REg/ Harmoniztn/2014 (Pt.I) dt. 14.01.2016 etc .

29 Swami Achyutanand Tirth & Ors vs Union Of India & Ors decided on 5 August, 2016 by Supreme Court of India.

Bihar[30] in which the power vested with Commissioner of Food Safety and Standards had been challenged. Few more cases M/S Nestle India Limited vs The Food Safety And Standards[31] regarding recent dispute of Maggie containing high percentage of pesticide, M/s. Dhariwal Industries Limited and another v. The State of Maharashtra and others[32] challenging validity of the provisions of two different Regulations under the Food Safety and Standards Act, 2006 ("the Food Safety Act "or FSS Act or Act of 2006") as well as the statutory order dated 19 July 2012 of the Commissioner of Food Safety. The dispute was regarding banning of manufacture, supply and distribution of pan masala containing tobacco. These cases helps the researcher to understand that how far the legal mechanism, administrative and procedural framework works in India in the area of Food Safety and Standards. There are lot of other judgements which has found part of the bibliographical section of this synopsis which are, though play important role in formulation of this research topic, but not worth to be mentioned here in this section.

Apart from the same, the literature available on World Health Origination webpage is very important as it give the global standards and developments. The guidelines provided by various nations are also very helpful. Apart from it, the researcher has also taken a pain to visit the SHODHGANGA, the official webpage of depository of all the thesis/dissertation of Indian Universities. Few thesis are really worth to refer, however, the research from legal point of view is not been observed.

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[30] M/S Omkar Agency & Anr vs The State of Bihar Through The Secretary decided on 19 July, 2016 by High Court of Patana.

[31] M/S Nestle India Limited vs The Food Safety And Standards ..Bombay High Court decided on 13 August, 2015

[32] M/S. Dhariwal Industries Limited ... vs The State Of Maharashtra And ... on 15 September, 2012, Bombay High Court, WRIT PETITION NO.1631 OF 2012.

Despite the above literature revealed the good material, however, it still fails to solve the queries in the mind of researcher. Firstly the most of the literature is not addressing critical approach and failed to provide the answer to why? How? And when?. Secondly the foreign literature though good, but does not provide the answer to issues in India context. Further, the government regulation though conceptually good, hardly provide strong background for effective legations, therefore law in book and in reality differ. The fact and observations on the topic is always observe contradicting the law. Unfortunately the ground reality differ than bookish law. Hence the present research become more incidental, relevant and essential. Needless to say, that this literature is useful, but the present research warranted to answer the various question that still whirled in the mind of researcher and the conflicting contrast situation between law and fact. This research, at the end, will definitely attempt to answer the question that has been framed by the researcher at the beginning of this research that is reflected in the objective and hypothesis of this synopsis.

As the legal study always makes the legal research more relevant and based on actual facts, incidences, events and happening from society, the researcher has opted for exploring this study by adopting contemporary approaches from legal dimensions to understand the contemporary laws and thus undertaken a research topic for exploration of her research study as, "Critical analysis of the Food Safety & Standards Act, 2006 with specific reference to restaurants in India". Once the research topic had been finalized, the researcher has framed the research design, objectives, hypotheses, and research methodology in the manner described below.

1.6 Objectives of the study

Every activities has certain purpose and are driven by an objective. This is equally applicable to research activity. The researcher has taken the research topic entitled, "Critical analysis of the Food Safety & Standards Act, 2006 with specific reference to restaurants in India" with the purpose to have a close look to the concept of food safety and standards. Research objectives may be linked with a hypothesis or used as a statement of purpose in a study. A statement of research objectives can serve to guide the activities of research.[33] Therefore, the objective of the research is important component of the research and are the starting point of the research activities.

It has been claim that every activities must have objectives which act as guiding principles and accelerate the research at several stages. These pre-determined objectives act as guiding beckon to execute research. It shape, fence and direct the research activities in planed manner. The present study has also carried out keeping these objectives in hand as a touchstone. The exploratory examination, as this investigative writing demands, construe in the light of these objectives. Thus objectives of the research are basic preamble for the complete research activities and act as a key to open the mind of research. Under this backdrop, the study has carried our with following objectives –

Objectives of the research are as follows-

1. To scrutinized the historical evolutionary development of law relating to food safety and standards in India

33 Available at https://www.soas.ac.uk/cedep-demos/000_P506_RM_3736-Demo/unit1/page_26.htm retrieved on 30.09.2016

2. To explore the jurisprudential analysis of concept of 'food safety', and 'food standard', in context of right to health with specific reference to restaurants in India
3. To examine critically the regulatory framework relating to 'food safety and standards' under the FSS act in India
4. To investigate the administrative and procedural impediments in the execution of FSS act in India
5. To examine the legal role assigned to various stakeholders under the legal framework to ensure food safety and standards with specific reference to restaurants in India
6. To analyses the co-relation between civil and criminal laws relating to legal control of food safety and standards in context of restaurants
7. To scrutinized the judicial approach on the food safety and standards in India and impact analysis on restaurants in India
8. To draw the inferences/conclusions and tender suitable recommendations with respect to the food safety and standards in India with specific reference to restaurant in India

As stated above, the research objectives are found by deciding what type of research needs to be done and what type of information a certain entity is hoping to obtain from the research. After deciding the purpose of the research, the objectives of the research can be decided by figuring out which subjects need to be covered.[34] The above objective will form the

34 Available at https://www.reference.com/business-finance/research-objectives-4e0b3bcfe53cb346 retrieved on 25.10.2016

skeleton of this research and researcher will attempt to achieve these objective at the end of this scholarly writing.

1.7 Hypotheses

Hypothesis is the tentative statement(s) the validity of which is yet to be tested. It is the hunch in the mind of researcher, like a preposition, as a mere presumption, which initiates and triggers the investigation. Hypothesis is usefully carries the researcher to investigate the validity and truthfulness of hypothesis. After testing upon it in the light of various facts, theories, available literature and data, the researcher can leads to the conclusion. According to Gearge A. Lundberg, 'A hypothesis is a tentative generalization the validity of which remains to be tested in its most elementary stage the hypothesis may be any hunch, imagination, idea, guess which becomes the basis for action or investigation".[35] Hypothesis provides a direction to research. The formulation of hypothesis is a prerequisite of any study.' Thus hypothesis is a tentative statement (s) the validity of which is yet to be tested. It is an essential part of an investigative writing. It is the starting point to set a direction of research.

Therefore, as every research activities needs specific prepositions to start with in the form of hypotheses, the present study has been as preceded with the following hypotheses -

1. The concept of food safety and standards has historical origin, however, the approach and perspective has been different
2. The concept of 'food safety' and 'standards' are vital for human civilization, but it has different jurisprudential approach from Indian perspective

35 Myneni (Dr.) S.R., Legal Research Methodology, Allahabad Law Agency, 1st Ed. 2001, pg.13

3. The regulatory mechanism under Indian Legal system has adopted traditional approach to address the issue in the field of food safety and standards
4. The stakeholders are facing administrative and procedural impediments which leads to worsen the problem and main hurdle in achieving the goal
5. The present FSS act does not prescribe and assign the defined role to the stakeholders under the act. This in turn create the imbalance situation and major hurdle for effective implantation of the act.
6. There is compelling need that for achieving the objectives under the FSS act, the role of restaurant owners, workforce and other stakeholders of restaurants is required to be re-defined.
7. There is utmost necessity of revisit the Food Safety and Standards Act, 2006 and interpret in the concept of contemporary development at International level.

As stated already, these hypotheses are the tentative statement, which validity may be tested in the light of data collected and scrutinized. These statements will be helpful for the researcher to shape her further research.

1.8 Research Methodology

The importance of research in any field including food safety and standard cannot be underestimated. For any field of study to progress what is required is – Research! That is why recent efforts to encourage the

effectiveness of regulation have emphasized the need for research and of corresponding sense of relevant to contemporary and social problems.[36]

Indeed, research and doing research encourage people to explore possibilities, to understand existing issues, and to disclose truths and fabricated ones. Without research, technological advancement and other developments could have remained a fantasy. Reading, writing, observing, analyzing, and interacting with others facilitate an inquisitive mind's quest for knowledge. Research serves as an instrument to achieve that goal.[37]

When we think of research, we often think of analyzing scholarly information.[38] But the research addressing the practical issues in any area need analyzing policies to practices of that specialized branch. It may be argued that well-conducted research is vital to the success of global health endeavors. Not only does research form the foundation of program development and policies all over the world, but it can also be translated into effective global health programs.[39] Despite, health is core concern for every society and government, but observation evidenced that the effective research is the scorching need of this area. So far, the research at conceptual level has been reflected a few instances, however, research focusing on execution and application aspects of law is hardly evident today. Despite, the food industry is growing across the globe, there is dearth of research addressing practical legal issues in this area of vital importance.

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36 Verma S.K. & Wani Afzal M., (Ed), Legal Research and Methodology, Indian Law Institute, 2001, 2nd Ed, pg. 290

37 Available at https://owlcation.com/misc/Why-Research-is-Important-Within-and-Beyond-the-Academe retrieved on 14.10.2016

38 Available at https://www.opensesame.com/blog/do-your-research-6-reasons-why-research-so-important-your-business retrieved on 22.09.2016

39 See, http://www.uniteforsight.org/research-methodology/module6 retrieved on 15.09.2016

One problem that often plagues progress in global health is the slow translation of research into practice. Oftentimes, a disconnect exists between those who create the evidence base and those who are positioned to implement the research findings. The underlying problem is in "the way in which the production of evidence is organized institutionally with highly centralized mechanisms, whereas the application of that science is highly decentralized. This social distance prevails because scientists are more oriented to the international audiences of other scientists for which they publish than to the needs of practitioners, policy makers, or the local public."[40]

Research is a careful search for truth and hence it is dynamic and continuous process and not a static phenomenon. Research methodology is a way to systematically addressing research problem. Proper methodological approach is a very essential part of every investigation. The researcher will use the doctrinal/non-empirical method for her research. Non-empirical/doctrinal research at first hand required the data collection from various research papers, reports including commission reports, journalistic writing in magazines, journals, published articles, national and international documents, acts, rules, books, reports, judicial pronouncements, international declaration, covenant and workshop papers. It further involves arranging, ordering systematically the propositions, analysis of data so collected and study through reasoning or rational deduction. The study made through doctrinal research method is mainly based on data collection from secondary sources, its tabulation and interpretation.

40 Diffusion Theory and Knowledge Dissemination, Utilization, and Integration in Public Health Annual Review of Public Health. 2009;30:151 -74. Available at http://www.uniteforsight.org/research-methodology/module6 retrieved on 28.09.2016

For her research writing, the researcher has primarily put emphasis on the literature available on FISSAI's webpage.[41] books on health laws, food safety and standard, acts, rules, Law Commission Reports, other commission reports, writing, seminar proceedings, international standards and various courts judgements along with the books on this august topic. It *inter alia* need analyzing various articles, presentations, reference material etc. yet another important source of information is the literature available at WHO[42] webpage.

The researcher had proposed to adopt the empirical study and will collected the data from primary sources. The different tools will be employed to collect the data which further will be tabulated and analyze in the light of various secondary sources. Thus, in her pursuit, researcher will adopt mostly the empirical research method, but secondary sources will also be resorted too, if deemed necessary for giving justice to the topic under research.

1.9 Research Design

Planning is the most essential aspect of every walk of life, and research endurance is not an exception to it. The research design of any research activity display a model of its prospective planned development. Planning the research is, therefore, one of the essential step of research activities. Mapping the outline of entire research conducted under the title 'research design'. The research design refers to the overall strategy that you choose to integrate the different components of

41 The FSSAI has been established under the Food Safety and Standards Act, 2006 as a statutory body for laying down science based standards for articles of food and regulating manufacturing, processing, distribution, sale and import of food so as to ensure safe and wholesome food for human consumption. The webpage provide the first hand information regarding advisories, orders, notification, legislations, regulatory compliances, important judicial pronouncements, and procedural phenomenon. Available at http://www.fssai.gov.in/. retrieved on 22.10.2016

42 World Health Organization.

the study in a coherent and logical way, thereby, ensuring you will effectively address the research problem; it constitutes the blueprint for the collection, measurement, and analysis of data.[43] It will further help execute the research norms in systematic way by adopting specific approach and precise dimensions.

Research design is a master plan that specifies the methods and procedures for collecting and analyzing needed information. In order to test the veracity of the hypotheses, to meet the objectives of the study and to arrive at far conclusion, the following methodology is adopted. The researcher has decided to adopt the exploratory research design method for his research. **Exploratory research** is a type of research conducted for a problem that has not been clearly defined.

Exploratory Research is research conducted for a problem that has not been clearly defined. It make conceptual distinctions or to posit an explanatory relationship. Exploratory research develops concepts more clearly, established priorities, develops operational definitions and improve the final research design.[1]Exploratory research helps determine the best research design, data-collection method and selection of subjects.[44]

Exploratory research helps determine the best research design, data collection method and selection of subjects. It presupposes the following steps –

- Identifying potential causes of a problem
- Establishing priorities or direction for a research program

43 See, http://apus.libguides.com/research_methods_guide/research_methods_design retrieved on 15.09.2016

44 See, Nandhini Rangarajan and Patricia M. Shields, A Playbook for Research Methods: Integrating Conceptual Frameworks and Project Management. Quoted from, https://en.wikipedia.org/wiki/Exploratory_research retrieved on 01.09.2016

- Clarifying concepts
- Assisting new concepts/theory development

Thus Exploratory research design essentially attempt at *abstraction* and *generalization.* Abstraction means that one need to translate the data into concepts; generalization means arranging the material so that it disengages from single persons, occurrences etc. and focuses on those structures that are common to all or most of the cases. The results of exploratory research are not usually useful for decision-making by themselves, but they can provide significant insight into a given situation. Exploratory research often relies on secondary research such as reviewing available literature and/or data, or qualitative approaches such as informal discussions with consumers, employees, management or competitors, and more formal approaches through in-depth interviews, focus groups, projective methods, case studies or pilot studies.

Therefore, at the present problem has different dimensions concerning the food safety, focusing the legal issues regarding standards and analyzing the existing legal framework to deal with restaurants. It further attempt to correlate the various moral, ethical and legal issues and touches the very basic aspects of individual health and food safety, this design is appeared to be most suitable.

Therefore, this research endurance will attempt to undertake within the facet of 'Research Design' mapped for the purpose. As the topic **"Critical analysis of the Food Safety & Standards Act, 2006 with specific reference to restaurants in India"** requires legal mapping of food safety and standards and application with respect to restaurants in India. Thus researcher has set an objectives focusing upon the legal dimensions and regulatory mechanism of food safety and standards in

relation to restaurants in India. The research will be carried out adopting exploratory design and data will be collected in order to verify the hypothesis.

These basic data will be then analysed with the help of references occurred in the books, articles, notes, journals, commission reports, court cases and comments. The emphasis will be given to find out how far the regulatory framework is possible for effective working and smooth functioning to regulate issues related to food safety and standards with specific relation to restaurants in India. Ultimately, the care will be taken that the research writing should end up with proposed workable model.

Appraisal of the study, Conclusion and suggestion, is the most important aspects of any research endurance. This research writing will find final placated in the form of drawn inferences and appropriate suggestions based on it.

1.10 Tentative chapterisation

This research voyage proposes the following tentative chapterisations :

Chapter 1: Introduction

Chapter 2: Historical evolution of law relating to food safety and standards in India

Chapter 3: Jurisprudential analysis of Right to Health with specific emphasis to Food safety and standards

Chapter 4: Legal mechanism and regulatory framework relating under FSS act with specific reference to restaurants

Chapter 5: Administrative and procedural impediments in implementation and execution of FSS Act to restaurants in India

Chapter 6: Legal analysis of role of various stakeholders for maintaining food safety and standards

Chapter 7: Judicial pronouncements on Food Safety and Standards

Chapter 8: Conclusions and Suggestions

However, it is to borne in mind that the chapterisation of this research voyage is tentative in nature, which may be modified, if later stage of research demands and to give justice to the subject under research.

1.11 Time framework

This research work will follow following time frame :

The rough draft of first two chapters will be completed within four months from the date of registration. Simultaneously, a data collection for remaining chapter will be collected.

The rough draft of next three chapters will be completed within 9 months from the date of registration. The tabulation, analysis and interpretation of data will be completed for next remaining chapters. The rough draft of next remaining chapters will be completed within one and half year from the date of registration.

The entire rough draft will be prepared within next three months.

The extensive report writing will be undertaken afterwards. The interlinking and intra-linkage of data will be done in next two months. The complete rough draft will be prepared within two years. After approval

and satisfaction of supervisor/guide, the task with or without modification will be completed and the final copy will be submitted within two and three years from the date of registration. This research activities will be carried out in consonance with the research norms prescribed by the University ordinance applicable in this behalf.

1.12 Sum Up

Thus it is quite clear that to critical analysis of the food safety and standard with specific reference to restaurant in India need multidimensional approach.

It specifically need to think for regulatory framework and legal regulation in the light of present socio-legal, political context and emerging human rights philosophy at international and national state. The modernization, westernization, and liberalization inculcated in human life inevitable and bound to increase the problem against the conceptual framework that had framed during 19th and 20th century. In this backdrop research for legal regulation is need of the time.

However, it is sure, that evolution is irreversible process and we cannot step back from it. What remain in our hand is to change the direction of progress, and we stick up to our commitment to turn it in the direction of to have sustainable society. What law can do in this regard is to make it relevant on the line of evolutionary development of society and modify itself, or modify the society on the line those suits to its objectives[45] so that this sustainability may be ensured. Thus, it is a high time, rather

45 Despite, nevertheless every society has its own objectives for survival and sustainability, such objectives are remained latent and does not manifest in any written form and may be inferred from its value system, however, typically in case of India, a clue may be have in Part – IV of the Constitution of India depicting Directive Principles of State Policy that revealed the future plan of framer of the constitution about the society. The researcher has taken these basic premises in mind as research presumption for her dissertation.

overdue to think and plan over the issues like food safety and standards with specific reference to restaurants in India.

This in the light of forthcoming discussion, justification and research potential in the topic as given by researcher at length in this synopsis, she needs kind consideration and permission from the RRC for proceeding for the research on this august topic with or without modifications, if any, and as suggested by RRC of Faculty of Law, SRT University, Nanded.

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Prof (Dr.) Veena V. Patil
Supervisor

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